

## ADMINISTRATIVE SERVICES DEPARTMENT

### MEMORANDUM

**DATE:** June 4, 2012

**TO:** The City of Temple City Oversight Board

**FROM:** Tracey L. Hause, Administrative Services Director

**SUBJECT:** STATUS REPORT ON THE DEPARTMENT OF FINANCE RESPONSE TO THE FORMER AGENCY'S RECOGNIZED OBLIGATION PAYMENT SCHEDULE ("ROPS") FOR THE PERIOD OF JANUARY 1, 2012 THROUGH JUNE 30, 2012 AND JULY 1, 2012 THROUGH DECEMBER 12, 2012

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#### **RECOMMENDATION:**

It is recommended that the City of Temple City Oversight Board ("Board") provide direction to City staff on how to proceed.

#### **BACKGROUND:**

1. On May 7, 2012, at the Special Meeting of the Board, Resolution No. OB - 1 approving the Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2012 through June 30, 2012 was adopted.
2. On May 7, 2012, at the Special Meeting of the Board, Resolution No. OB -2 approving the Recognized Obligation Payment Schedule ("ROPS") for the period of July 1, 2012 through Decemeber 31, 2012 was adopted with minor corrections.
3. On May 14, 2012, City staff submitted the revised ROPS to the State Department of Finance ("DOF").
4. On May 26, 2012, the City received correspondence (Attachment "A") from the Department of Finance disallowing the certain item on the ROPS.
5. On May 30, 2012, the City responded with correspondence (Attachment "B") disputing those items that were disallowed by the DOF.

**ANALYSIS:**

- The DOF is aggressively exercising its right to deny items on approved ROPS. Some specific types of agreements that are being denied or at risk of being invalidated include:
- Loan agreements between redevelopment agencies and cities, even if those agreements were made well before January 1, 2011
- Contracts for expenditures of bond proceeds entered into after June 27, 2011
- Executory contracts with private parties for anticipated projects that were not fully committed prior to June 28, 2011
- Contracts entered into between June 27, 2011 and August 11, 2011—the date that the Supreme Court issued a stay of enforcement of both ABX1 26 and ABX1 27—by redevelopment agencies who had publicly declared their intent to create a voluntary alternative redevelopment program under ABX1 27

The following options should be well thought out when considering how to proceed:

**Accept DOF Decision**

- If this option is pursued, the Successor Agency (“Agency”) should remove the line item and bring it back to the Agency and Board for consideration, unless the Agency/Board has already provided adequate direction to staff to remove the item. DOF has indicated that they will accept a modified ROPS in order to issue an approval without an Board meeting.

**Submit the ROPS item to the Oversight Board for Reconsideration & Resubmit to DOF**

- Under California Health and Safety Code section 34179(h), the DOF can, within ten days of receipt of a ROPS approved by the Board, request a review of a ROPS item and “return it to the oversight board for reconsideration....” Although DOF may not be following this section, and instead simply “denying” or “questioning” certain line items, it is recommend the Board follow the statutory guidelines, particularly if it considers pursuing legal action against the State.
- Ensure that when the Oversight Board reconsiders the item, it does so with the benefit of a comprehensive record justifying the ROPS item. This record will serve as the basis for any future writ action.

- Pursuant to 34177(a) (2), the DOF “shall” have the authority to require “any documents associated with the enforceable obligations to be provided to them in a manner of their choosing.” Given this, if the Board submit a reconsidered ROPS item to the DOF, the Board should provide the DOF with all available documentation justifying that ROPS item, even if it was previously submitted.
- For line items that are agreements with the City, it is recommended that the Agency re-enter into an agreement with the City, as described below, be simultaneously pursued.
- If the Board does not approve the disputed ROPS item upon reconsideration, a writ action could still be pursued; also naming the Board, however weaker administrative record would exist.

#### **Re-enter Agreement With the City**

- Pursuant to Section 34178, a “successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding **may do so upon obtaining approval of its oversight board.**” This option is reiterated in section 34180(h). Under this provision, the Agency’s and Board may be able to resurrect loan or other agreements with the City by re-entering into those agreements. This provision, however, is expressly limited to agreements with the public entity that formed the redevelopment agency.
- As noted above, this option should be pursued along with the re-submittal of the disputed ROPS item to the Oversight Board.

#### **CONCLUSION:**

City staff will discuss these options with the Board in more detail at the regularly scheduled Board meeting on June 4, 2012.

#### **ATTACHMENTS:**

- A. Letter Dated May 26, 2012 from State Department of Finance
- B. Letter Dated May 30, 2012 from City of Temple City, Acting as Successor Agency





EDMUND G. BROWN JR. • GOVERNOR

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May 26, 2012

Tracey L. Hause  
 Administrative Services Director  
 City of Temple City  
 9701 Las Tunas Drive  
 Temple City, CA 91780-2249

Dear Ms. Hause:

Pursuant to Health and Safety Code (HSC) section 34177 (l) (2) (C), the Temple City (City) Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS) to the California Department of Finance (Finance) on May 14, 2012 for the periods of January through June and July through December 2012. Finance staff contacted you for clarification of items listed in the ROPS.

Except for items disallowed in whole or in part as enforceable obligations noted below, Finance is approving the remaining items listed in your ROPS for both periods. HSC section 34171 (d) lists enforceable obligation (EO) characteristics. Based on a sample of line items reviewed, the following items listed on both the January through June 2012 and July through December 2012 ROPS do not qualify as EOs:

- Page 1, item 3 – 1998 City loan in the amount of \$3.9 million. HSC section 34171 (d) (2) states that loans between the entity that created the redevelopment agency (RDA) and the former RDA are only enforceable if made within the first two years of the RDA's existence.
- Page 1, item 4 – Rosemead Boulevard Enhancement Project in the amount of \$1.9 million. It is our understanding that commitments have not been made for \$1,425,253 out of the total \$1,854,953. Therefore, \$1,425,253 of this item is not an EO. HSC section 34163 (b) prohibits a redevelopment agency from incurring any obligations or making commitments after June 27, 2011. Additionally, HSC section 34177 (i) states "bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case, the proceeds may be used to defease the bonds." ABx1 26 does not allow successor agencies to enter into new contracts, unless those contracts are specifically required pursuant to the terms of another pre-existing contract that meets the requirements of ABx1 26, or are specifically required by bond indentures. The above requirements have not been established. Therefore, the unexpended bond funds may not be used to enter into new obligations.
- Page 2, item 4 – Housing Bond Proceeds, unexpended bond funds in the amount of \$463,738. Section 34177(i) states "bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case,

the proceeds may be used to defease the bonds." ABx1 26 does not allow successor agencies to enter into new contracts, unless those contracts are specifically required pursuant to the terms of another pre-existing contract that meets the requirements of ABx1 26, or are specifically required by bond indentures. The above requirements have not been established. Therefore, the unexpended bond funds may not be used to enter into new obligations.

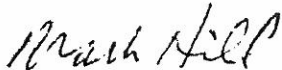
This is our determination with respect to any items funded from the Redevelopment Property Tax Trust Fund (RPTTF) for the June 1, 2012 property tax allocations. If your oversight board disagrees with our determination with respect to any items not funded with property tax, any future resolution of the disputed issue may be accommodated by amending the ROPS for the appropriate time period. Items not questioned during this review are subject to a subsequent review, if they are included on a future ROPS. If an item included on a future ROPS is not an enforceable obligation, Finance reserves the right to remove that item from the future ROPS, even if it was not removed from the preceding ROPS.

Please refer to Exhibit 12 at [http://www.dof.ca.gov/assembly\\_bills\\_26-27/view.php](http://www.dof.ca.gov/assembly_bills_26-27/view.php) for the amount of RPTTF that was approved by Finance based on the schedule submitted.

As you are aware the amount of available RPTTF is the same as the property tax increment that was available prior to ABx1 26. This amount is not and never was an unlimited funding source. Therefore as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available in the RPTTF.

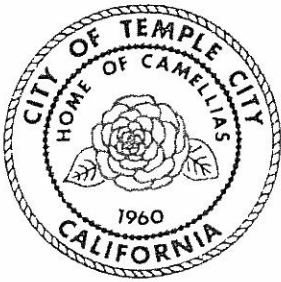
Please direct inquiries to Evelyn Suess, Supervisor or Brian Dunham, Lead Analyst at (916) 322-2985.

Sincerely,



MARK HILL  
Program Budget Manager

cc: Mr. Jose E. Pulido, City Manager, Temple City  
Mr. Brian Haworth, Economic Development Manager, Temple City  
Ms. Kristina Burns, Program Specialist III, County of Los Angeles



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May 30, 2012

Mark Hill  
Program Budget Manager  
Department of Finance  
915 L. Street  
Sacramento, CA 95814-3705

Re: Temple City Successor Agency ROPS

Dear Mr. Hill:

The City of Temple City, acting in its capacity as Successor Agency to the former Community Redevelopment Agency of the City of Temple City, is in receipt of your May 26, 2012 letter regarding our Recognized Obligation Payment Schedule. As you know, we have been in contact with Department of Finance staff, providing additional documentation regarding some items on the ROPS and otherwise explaining why specific items should be considered enforceable obligations of the Successor Agency. While we thank you for your approval of much of the ROPS, we would like this letter to serve as an official response to the three (3) items that you state do not qualify as enforceable obligations. Our position vis-a-vis each item is outlined below, and we would welcome the opportunity to discuss these issues at greater length with you or with Department of Finance staff.

- Page 1, Item 3 -- 1998 City Loan in the amount of \$3.9 million. The City of Temple City, acting in both its own capacity and as Successor Agency, continues to believe that the provision of ABx1 26 that purports to eliminate legitimate debt between cities and former redevelopment agencies is fundamentally flawed. We recognize, however, that ABx1 26 as written represents the current state of the law as to enforceable obligations and that this loan is not an enforceable obligation under the law. We therefore will remove the 1998 City Loan from our current ROPS and all future ROPS unless and until legislation or litigation result in a change in the operative law. We do so with full reservation of our right to replace the 1998 City Loan on any future ROPS if legislation and/or litigation result in the loan being deemed a valid obligation (whether a statutory "enforceable obligation" as defined in Section 34170 or otherwise) properly payable by the Successor Agency.



- Page 1, Item 4 -- Rosemead Boulevard Enhancement Project in the amount of \$1.9 million. It is our understanding that the Department of Finance is denying the Successor Agency the ability to utilize \$1,425,253 in bond proceeds for this capital improvement project. Our 2005 bond issuance directed that the sum of approximately \$2,974,725.18 be deposited in the former Redevelopment Agency's capital improvements fund to pay for capital projects. The Rosemead Boulevard Enhancement Project is a capital project. The sum of \$1.9 million in bond proceeds is currently available. And Health & Safety Code section 34177(i), as enacted by ABx1 26, reads in relevant part: "***Bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case, the proceeds may be used to defease the bonds.***" In the case of the bond proceeds intended to be used for the Rosemead Boulevard project, there is no question that the purposes of the bond issuance can still be achieved -- the existence of the project is conclusive proof thereof. The Legislature has mandated that bond proceeds be used for the purposes for which the bonds were sold unless those purposes cannot be achieved. We therefore must conclude that if there is a means by which to use the bond proceeds for a capital project -- and we have determined that the Rosemead Boulevard project is the best capital project for which to use them -- then they must be so used. In order to properly document the use of the bond proceeds, the City and the Successor Agency will enter into an agreement as authorized by section 34177(a) under which the Successor Agency will transfer the bond proceeds to the City and the City will agree to use them for the purposes for which the bonds were issued. We will have this agreement approved by the Successor Agency's Oversight Board as required by section 34180(h) and will deliver the agreement to you when it is executed and approved. Just as we are following the dictates of ABx1 26 with respect to the 1998 City Loan, no matter our interpretation of the relevant law or equity inherent in the elimination of valid debt between government agencies, it is our anticipation that the Department of Finance will adhere to the grants of authority set forth in ABx1 26 as to the need to use bond proceeds according to the bond documents and as to the ability of cities and successor agencies to enter into binding contracts and agreements and will not challenge this agreement.
- Page 2, Item 4 -- Housing bond proceeds. As with the Rosemead Boulevard Enhancement Project, the bond proceeds referenced in this line item must be used for affordable housing obligations. The State cannot interfere with the use of bond proceeds for the purposes set forth in the bond documents or you risk fundamentally altering the nature of the bondholders' security, both from a tax perspective and from a repayment perspective. We have determined that the City, acting in its role as Housing Successor to the former Community Redevelopment Agency of the City of Temple City, may enter into an agreement with the Successor Agency for the transfer of the bond proceeds so that they might be used for the purposes for which the bonds were issued. In light of this, and of our argument above regarding the Rosemead Boulevard project, we will have an

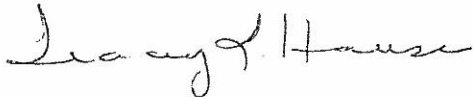
Letter - Mark Hill  
May 30, 2012  
Page 2

- agreement executed and approved by the Successor Agency's Oversight Board as required by section 34180(h), and will deliver the agreement to you thereafter. It is our anticipation that the Department of Finance will adhere to the grants of authority set forth in ABx1 26 as to the need to use bond proceeds according to the bond documents and as to the ability of cities and successor agencies to enter into binding contracts and agreements and will not challenge this agreement.

Upon completing the agreements provided for in the latter two bullet points above, we will amend our ROPS and will thereafter use the bond funds for the purposes for which the bonds were issued, as section 34177 clearly directs and as ABx1 26, taken as a whole, clearly anticipates.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tracey L. Hause".

Tracey L. Hause  
Administrative Services Director